

# EXHIBIT G

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

STORMANS, INCORPORATED, doing  
business as RALPH'S THRIFTWAY;  
RHONDA MESLER; and MARGO THELEN,

Plaintiffs,

v.

MARY SELECKY, Acting Secretary of  
the Washington State Department  
of Health, et al,

Defendants.

Docket No. C07-5374RBL

Tacoma, Washington  
December 9, 2011

VOLUME 6

ROUGH DRAFT

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE RONALD B. LEIGHTON  
UNITED STATES DISTRICT COURT JUDGE.

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript  
produced by Reporter on computer.

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1 the case -- have you seen that there are situations, like  
2 you've asked about today, where you can be presented with a  
3 whole bunch of hypotheticals that simply don't work very well  
4 under whatever rule has been adopted by the Board?

5 A. The rules can never be so prescriptive to tell you under  
6 every circumstance what to do.

7 Q. So does the Board, in executing a rule, try to make a rule  
8 that it believes will work the best for the most?

9 A. That's correct.

10 Q. Recognizing that there may be hypotheticals, very  
11 difficult situations that the rules simply don't address very  
12 well?

13 A. Very much so.

14 MR. TOMISSER: Thank you, Ms. Boyer.

15 THE COURT: Mr. Boeder?

16 MR. BOEDER: No further questions.

17 EXAMINATION

18 BY THE COURT:

19 Q. Ms. Boyer, you explained the professionalism of  
20 pharmacists --

21 A. Yes.

22 Q. -- and their desire to care for their patients, right?

23 A. Yes.

24 Q. And that's a philosophy that has been invoked for as long  
25 as the profession has been around, hasn't it?

1 A. I believe so.

2 Q. It's not related to the rule-making, is it?

3 A. I believe so.

4 Q. Was the Board of Pharmacy -- did it have a role in the law  
5 that was passed by the state that the voters called Death With  
6 Dignity? Did they counsel; did they give input?

7 A. There was some input around that. We were not a major  
8 player in it, but we gave some input, yes.

9 Q. Was there input that only volunteers would have to  
10 participate in Death With Dignity?

11 A. I know that's the outcome. I don't know that we  
12 specifically gave input to that. The professional  
13 association, the State Pharmacy Association, may have. I  
14 don't know.

15 Q. But it is a law that respects conscience, does it not?

16 A. Yes, it does.

17 Q. And that's an exception from the generally applicable  
18 rule, isn't it?

19 A. Yes, it is.

20 Q. Did you conjure up a reason for a discrepancy in your  
21 overall philosophy when you single out the death tonic that a  
22 pharmacist is going to dispense?

23 A. If I understand your question, the pharmacist  
24 responsibility rule allows for opting out for conscience  
25 reasons.

1 Q. Right, but they work at a pharmacy.

2 A. Yes, they do. So that there is a distinction, however.

3 Q. The pharmacy has to --

4 A. Yes.

5 Q. -- has to dispense the Death With Dignity rule?

6 A. Not the Death With Dignity but with the rules here, that's  
7 right, the pharmacy --

8 Q. So why the distinction, in your mind, is there a  
9 distinction for not having to dispense the material that is  
10 going to take a terminally ill patient's life versus another  
11 situation?

12 A. Well, the Death With Dignity was done through statute,  
13 through the legislature, so not ruled on by the Board or any  
14 board. But in this case, pharmacist versus pharmacy rules, I  
15 liken it to a particular physician doesn't want to treat a  
16 particular patient in an emergency room or in a hospital, but  
17 the hospital still has the obligation to take care of the  
18 patient. I have that own personal analogy since I come from a  
19 hospital practice. The pharmacist can opt out, but the  
20 pharmacy needs to take care of that patient.

21 Q. I am focussing on Death With Dignity now.

22 A. Okay.

23 Q. What's the difference between your explanation of the rule  
24 and the application of the rule in Death With Dignity?

25 Because the Board of Pharmacy, I would take it, had some

1 input?

2 A. I think the Board viewed -- didn't take into account the  
3 Death With Dignity statute when they were considering these  
4 rules.

5 Q. I am mindful of that.

6 A. Okay.

7 Q. One predated the Death With Dignity, but your input was to  
8 carve a significant philosophical bias in the Death With  
9 Dignity law, wasn't it? It's going to be only for volunteers?

10 A. Yes, that's right.

11 Q. That was an exception -- that's an exceptional  
12 circumstance?

13 A. It is an exceptional circumstance. I see it -- personally  
14 I see it as a very exceptional circumstance.

15 Q. Is it less odious for someone who wants to provide, in a  
16 pharmacy setting, a drug that's going to cause a death of a  
17 life in their faith than the tonic for the terminally ill?

18 A. A very difficult situation, the ability to respond to your  
19 question. I am struggling to respond to it. I think the  
20 Death With Dignity is an extremely personal and extremely  
21 difficult situation. That is not the general approach here.

22 Q. If a person owns a pharmacy and his faith informs him that  
23 life begins at conception, and you are going to be the person,  
24 the entity, that's going to deliver that drug, is that a valid  
25 belief?

1 A. I wouldn't question the belief. Again, the Board's been  
2 about access to care and not being a barrier. So it's not an  
3 easy dilemma.

4 Q. Before these rules were adopted, did you work in the  
5 environment, in the world of the conscience clauses in the  
6 statutes, various forms of conscience, the fundamental right  
7 of the individual and the right of religiously-sponsored  
8 health care facilities or health care carriers?

9 A. I did not, no.

10 Q. When you passed these rules, did you think that there  
11 would be an impact on the Catholic hospitals as to Plan B?

12 A. We didn't discuss it. We didn't contemplate it, let me  
13 put it that way.

14 Q. The vast majority of the public discourse was on Plan B,  
15 wasn't it?

16 A. The vast majority, yes.

17 Q. I have seen this stuff, and it's --

18 A. Yeah.

19 Q. It's to distraction. I mean, it's all about Plan B, isn't  
20 it?

21 A. The Board really didn't want it to be all about Plan B.

22 Q. Right. But it was a plebiscite, and there were 83 percent  
23 of thousands of people who wanted to participate --

24 A. Yes.

25 Q. -- and vote, and voted, right?



1 A. Yeah, uh-huh.

2 Q. And there's a minority group that -- you understand that  
3 the Catholic Church is opposed to emergency contraception, is  
4 it not? You know that?

5 A. Yes.

6 Q. You know they don't sponsor -- they don't stock it in  
7 their retail pharmacy?

8 A. But I understand that if someone were to come there, they  
9 would be sent to that same emergency room within the hospital  
10 to get it taken care of.

11 Q. Now, what's your understanding of the interpretation of  
12 that rule in the emergency room if they go to the emergency  
13 room and they have not been a victim of sexual assault?

14 A. I don't know because I have not worked at the Catholic  
15 system.

16 Q. Well, the decision about the constitutionality of this law  
17 is based on its generally applicable rule. It's neutral and  
18 it's generally applicable. And if the emergency room at St.  
19 Joe's or Sacred Heart or Providence says we will put it in the  
20 kit for sexual assault, and they will administer it in that  
21 situation but not for unprotected sex, consensually, they will  
22 not dispense it; do they have a different rule than  
23 Mr. Stormans has?

24 A. No, they don't have a different rule, no.

25 Q. Do they have an exception because they are a

1 religiously-sponsored hospital?

2 A. No, they don't have an exception. I think what's  
3 happened -- and again, the Board is complaint-driven. When  
4 the person would come to us and complain, then we would  
5 investigate that complaint. But obviously, people probably  
6 don't go there for that purpose.

7 Q. Do you know what the statistics are for poor people and  
8 how much of their health care treatment is at the emergency  
9 room?

10 A. Yeah, I know it's a significant.

11 Q. It's significant and it's growing bigger and bigger?

12 A. Yes.

13 Q. I have got another case that the State wants to dial back  
14 the compensation for the services that are being done. So  
15 they are going to the emergency rooms --

16 A. Yes.

17 Q. -- in some cases? And you are going to wait until  
18 somebody comes and complains, and only then, to enforce this  
19 rule in a generally-applicable fashion?

20 A. It's the way the Board operates. All these boards operate  
21 this way. No matter the professional board, they operate --  
22 health care board -- they operate this way because to do  
23 surveillance is difficult. Now, we do have people that do  
24 inspections.

25 Q. Inspections -- I mean, they know that when they go into

1 the retail pharmacy at St. Peters that they are not going to  
2 find Plan B on the shelf, aren't they? That's what they are  
3 going to find?

4 A. Again, I don't believe they've looked for Plan B on the  
5 shelf, and that may be partly because we have got this  
6 proceeding going that I believe has dampened the approach to  
7 it.

8 Q. So can a Catholic Church suppress demand? Can they put a  
9 sign up, put a scriptural deal up, and when they tell somebody  
10 that they don't have Plan B, they can go away and find another  
11 pharmacy, and that will pass away, there will be no  
12 enforcement in that situation even though there's a violation?

13 A. No, there would be enforcement. It's just like this sign  
14 you saw from Walgreens on OxyContin. That's relatively  
15 recent. Like I say, we are having conversations with their  
16 leadership coming up. Yeah, those are concerns.

17 Q. Have you contemplated the standoff with the faith-based  
18 institutions when you say you have to stock Plan B or you lose  
19 your license?

20 A. I haven't contemplated it, no.

21 Q. I have contemplated little less -- little more than that  
22 for four or five years. I have tried to figure out what you  
23 were going to do.

24 Do you know what the hospital situation in this state is  
25 and what percentage of the facilities are in the hands of

1 faith-based institutions?

2 A. It's significant, yes, I understand.

3 Q. But you are going to enforce it across the board, not just  
4 taking the low-hanging fruit, Mr. Stormans or anybody, and you  
5 are going to enforce it against the pharmacies of the  
6 Catholic --

7 A. Again, the Board operates on a complaint. If a complaint  
8 comes in, we will investigate it.

9 Q. You know, that defies common sense. You know St. Joe's,  
10 do they have a population that would have a demand for Plan B?

11 A. Probably not.

12 Q. The neighborhood around St. Joe's does not have a need for  
13 Plan B?

14 A. Probably the neighborhood does, but those folks probably  
15 don't go there to get Plan B.

16 Q. So we've got trained patients that will go to their own  
17 place until a shopping tour by Planned Parenthood to expose  
18 someone, that's right? That's not fundamentally fair. It's  
19 got to be enforced against all of them or it's got to be  
20 enforced to none of them.

21 You can put the crucifix on the door of the pharmacy, you  
22 can put a sign saying it's wrong or whatever the Pope says in  
23 his message, and they just go away, right, they don't have to  
24 be vigilant, they don't have to be demanding. They don't have  
25 to be militant; they just walk away and go find their Plan B

1 somewhere else, right?

2 A. Practically speaking, I think the people don't seek Plan B  
3 where they assume they can't get it.

4 Q. My God. My God. So he's out there, right fruit, right  
5 fruit, the test marketers, they go to his store and say "do  
6 you have Plan B?" And he's honest, he says, "it violates the  
7 tenet of my faith and I can't do that." And they will picket  
8 him. They will make complaints in triplicate. They will go  
9 get him, and he'll be out, and these two women will be out.  
10 And nobody will ever complain about the religiously-sponsored  
11 care facilities that provide so much of our health care in  
12 this state, and that hasn't surfaced in the debate in the  
13 Board?

14 A. It has not, that's right. The Board looked at this  
15 deliberately, looked at this in a more broad context, not just  
16 Plan B.

17 Q. The First Amendment implicates the rule in a serious way.  
18 That's why we are here. That's the debate. It's not  
19 OxyContin. It may be a stupid rule, but I will enforce a  
20 stupid rule that's constitutional. It's misguided, maybe.  
21 That's okay.

22 But when you draw a distinction between people of faith  
23 and one guy loses his license and another person with the same  
24 faith lives in anonymity, supposedly, that's troublesome.  
25 That's troublesome.

1           Anyway, any questions that anybody wants?

2           MR. O'BAN: Not from the plaintiffs, Your Honor.

3           THE COURT: Ms. Boyer, thank you very much.

4           THE WITNESS: Certainly.

5           THE COURT: I meant no disrespect at all. These are  
6 tough questions, and I have spent a great deal of time toiling  
7 in these fields, and I am having a tough time.

8           THE WITNESS: Can I share one other thing?

9           THE COURT: Yes.

10          THE WITNESS: One other thought to think about is, to  
11 me, in some ways there's a slippery slope here. If you look  
12 at other types of faith where it isn't just anti-Plan B, they  
13 don't believe -- if I am a pharmacist who is some other faith,  
14 that I hate to name, but doesn't believe in treating mental  
15 health --

16          THE COURT: Right.

17          THE WITNESS: -- so then do I carve out for them? So  
18 to me, by being more neutral, as we believe these rules are,  
19 then you are taking us down a path that I guess would be  
20 worrisome.

21          THE COURT: These rules are the slippery slope.  
22 Facilitated referral, refuse and referral, is the way that  
23 business was done for a long, long, long time, and not too  
24 many patients were ignored.

25          So thank you very much.